

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 16/AIL/Lab./J/2013, dated, 9th February 2013)

NOTIFICATION

Whereas, an Award in I.D.No. 11/1999, dated 23-10-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the President/Secretary, P.L.Haulwel Trailers Labour Union (Affiliated to AICCTU), Puducherry and the management of M/s. P.L. Haulwel Trailers Limited, Puducherry over charter of demands has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. M.s. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present: Thiru T. MOHANDASS, M.A. B.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Puducherry.

Thursday, the 23rd day of February, 2012

I.D. No. 11/1999

The President/Secretary,
P.L. Haulwel Trailers Labour Union,
Affiliated to AICCTU, Puducherry. . . Petitioner

Versus

M/s. P.L. Haulwel Trailers Limited,
Puducherry. . . Respondent

This petition coming before me for final hearing on 20-2-2012 in the presence of Thiru P. Sankaran, Advocate for the petitioner, Thiru K. Babu, Advocate for the respondent and upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following :

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, vide G.O. Rt. No.51/99/Lab./L, dated 19-4-1999 of the Labour Department, Puducherry, to resolve the following dispute between the petitioners and the respondent, viz.,

(1) Whether the refusal of employment to the workmen as mentioned in Annexure-II of this order by the management of M/s. P.L. Haulwel Trailers (P) Ltd., Mettupalayam, Puducherry-9 on the ground that they are the employees of their contractor Thiru Selvaraj is justified? If not, to what relief they are entitled to?

(2) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement has stated as follows:-

The following employees are the members of the petitioner union:-

- | | |
|---------------------------|---------------------------|
| 1. V. Ganesan | .. Axil Fitter |
| 2. S. Arul | .. Do. |
| 3. N.S. Manavalan | .. Fitter |
| 4. K.K. Ravi | .. Do. |
| 5. R. Christ Doss | .. Do. |
| 6. G. Jagathala Prathaban | .. Do. |
| 7. S. Prabu | .. Do. |
| 8. Delhi Ganesan | .. Do. |
| 9. Jagathisan | .. Do. |
| 10. D. Ilango | .. Do. |
| 11. D. Iyyappan | .. Do. |
| 12. Venkatesan | .. Do. |
| 13. S. Sakthivel | .. Do. |
| 14. K. Manniyan | .. Do. |
| 15. K. Rangaraj | .. Do. |
| 16. Sriram | .. Do. |
| 17. Palaniappan | .. Do. |
| 18. A.S. Raj | .. Do. |
| 19. K. Suresh | .. Do. |
| 20. M. Ramachandran | .. Do. |
| 21. Thirunavukarasu | .. Gas Cutting and Welder |
| 22. A. Arokiasamy | .. Do. |
| 23. Elliyas | .. Welder |
| 24. R. Subramani | .. Turner |
| 25. A. Singaravelu | .. Driller |

26.	Munusamy	..	Driller
27.	P. Palany	..	Electrician
28.	R. Ponniyan	..	Do.
29.	Rabel	..	Do.
30.	T. Palani	..	Do.
31.	V. Thirunavukarasu	..	Grinder
32.	Sanjeevi	..	Do.
33.	Murugan	..	Do.
34.	Veerappan	..	Do.
35.	S. John Kennadi	..	Painter
36.	D. Gopi	..	Do.
37.	Ravichandran	..	Do.
38.	Gunasekaran	..	Do.
39.	Narayanan	..	Do.
40.	R. Ezhumalai	..	Axil Helper
41.	D. Chelladurai	..	Do.
42.	G. Thirunavukarasu	..	Do.
43.	Vetrivel	..	Helper
44.	Balasubramanian	..	Do.
45.	Elangovan	..	Do.
46.	Raja	..	Do.
47.	Vengatesan	..	Do.
48.	Devendiran	..	Do.
49.	Selvam	..	Do.
50.	Dasarathan	..	Do.
51.	Jagadesan	..	Do.
52.	Anilkumar	..	Do.
53.	Suresh Kumar	..	Do.
54.	Senthil Kumar	..	Do.
55.	Senthil	..	Do.
56.	P. Vel	..	Do.
57.	Solai Murugan	..	Do.
58.	Kandhaswamy	..	Welder
59.	P. Natarajan	..	Do.
60.	N. S. Karikalan	..	Do.
61.	China Durai	..	Do.
62.	Shanmugavel	..	Loading and unloading workers
63.	Ganesan	..	Do.
64.	Ramachandran	..	Do.
65.	Panneerselvam	..	Do.
66.	Ganapathi	..	Do.
67.	Vijayan	..	Do.

68.	Rangasamy	..	Loading and unloading workers
69.	Thirumal	..	Do.
70.	Selladurai	..	Do.
71.	Prabu	..	Do.

Amended as per order in IA 51/2012, dated 30-11-2012

The said employees were engaged in two shifts for production of trailer chassis and assembling from 1992 as workmen on regular basis under respondent management factory premises called Unit-II. They were regularly engaged in the basically core production activities perennial in nature continuously without any break throughout the year. The respondent management failed and refused to extend the statutory benefits under the Factories Act, E.S.I., E.P.F. and the payment of Bonus Act, etc. The petitioner union demanded and complained to the authorities concerned for those benefits to be extended to the workmen for whom the respondent management failed to respond and dragged on the issue indefinitely. The respondent management also intimidated the workmen and the office bearers of the union through one E. Selvaraj creating unrest and dissatisfaction among the workmen.

The petitioner was compelled to issue a notice of strike dated 23-5-1996 to the respondent management to fulfil their demands and the Conciliation Officer called for conciliation on it. But the respondent management refused to negotiate the demands even before the Labour Officer and tried to induct one Selvaraj all of a sudden surprisingly in the proceedings as if he was the labour contractor through whom the workmen were employee and the respondent management was only the principal employer by which imposed on the workmen to strike work from 6-6-1996, since there was no other alternative for the protection of their rights.

After several rounds of talks before the Labour Officer, the respondent management agreed the demands of the petitioner union resulting in the withdrawal of the strike by the petitioner union and the workmen reported for duty. But the respondent management orally refused employment to all the workmen without any reason, prior notice, *prima facie*, allegations, charges without any enquiry against law and natural justice amounting to illegal retrenchment without any compensation as per law who were working continuously from 1992 to 1996. Hence, the refusal of employment on the ground that they are the employees of their contractor is not at all justified as it is highly imaginary, illegal, unjust and not admissible under law. Hence, this industrial dispute is filed to reinstate the above said employees into service with full back wages, continuity of service and other attendant benefits as per law.

3. The respondent in his counter statement has stated as follows:-

The respondent is a company registered under the Companies Act and is engaged in business of design, manufacture, sales and marketing of trailers, semi-trailers. As part of its requirements, the respondent company engaged the contractor by name E. Selvaraj to provide contract labour for carrying out the contractual obligations entrusted to the said contractor. The workmen on whose behalf this dispute has been raised by the petitioner union were not employed by this respondent. The said persons were admittedly employed by the contractor E. Selvaraj.

The contractor E. Selvaraj is the appropriate and necessary party for proper adjudication of the dispute and without whose presence the dispute cannot be rightly adjudicated. Since the persons referred in the order of reference was not workmen of this respondent at any point of time and as they were only employees of the said contractor, this respondent is not in a position to give its detailed remarks on the claim made by the petitioner union and only if the contractor is made as a party to this dispute, this respondent will be in a position to file its detailed counter statement. Further it is learnt from the contractor E. Selvaraj that about 17 workmen, who were the employees of the said contractor settled their accounts fully arising out of the voluntary resignation submitted by them to their employer E. Selvaraj. It is also learnt by the respondent that the individuals had entered into a settlement with their employer E. Selvaraj, contractor as contemplated under section 18(1) of Industrial Disputes Act for having settled that accounts fully with their employer/contractor. Hence, he prays for dismissal of the petition.

4. In the rejoinder to the counter, the petitioner has stated as follows:-

The petitioner denies the averments that the respondent engaged a contractor E. Selvaraj to provide labour, since there is no such permission or licence granted to the respondent or to the alleged contractor E. Selvaraj and the burden of proof lies with the respondent to prove the same with documentary evidence. The workmen of the petitioner union were very well employed by the respondent and engaged in the production within the factory premises that belonged to the respondent and even if there was some illegal contract, it is not binding on the petitioner union workmen and only the principal employer is under legal obligation as there exists the employer employee relationship according to law between them. The respondent is also stopped

from raising the issue of the petitioner union's *locus standi* to raise the dispute or about the membership under the Trade Unions Act, 1926, as they are not the issues to be decided by this court or the points of reference. The jurisdiction of this court is limited only to the reference made by the Government of Puducherry under G.O.Rt. No.51/99/Lab/L, dated 19-4-1999. The dispute was faced by the union of the workmen as it was a common issue, that is, the refusal of employment to all workmen by the respondent under section 2A of the Industrial Disputes Act is absolute valid under law and it is untenable to say that it amounts to non-employment of individual workmen and should be raised under section 2K of the Industrial Disputes Act.

5. In the additional counter, the respondent has stated as follows:-

All the persons were not continuously posted by the contractor in the respondent factory and he used to supply labour as and when required by the company and the reference notification mentioned persons will be used by him on rotational basis and they will be provided job by the contractor in the respondent factory only intermittently and as such this respondent does not know the proper identity of those persons. Further they were engaged only by the said contractor and were allotted the jobs only by him through his supervisor.

The contractor Selvaraj had made PF contributions to his employees *vide* separate PF sub-code *vide* No.336-A. The said contractor had made all E.S.I. contributions to his employees employed by him in the respondent company by way of separate challans under the respondent's company code as it is the practice followed all these days.

Some of the contractor's employees, whose names were included in the petitioner union's representation submitted to the Labour Officer (Conciliation), represented by Mettupalayam Industries Paattali Workers Union, Puducherry entered into a settlement under section 18(1) of the Industrial Disputes Act on 1-9-1997 to which the said contractor was also a party. In the said settlement, it was agreed that some of the contractor's employees would be recruited by the respondent company, who had obtained the Principal Employer's Certificate and that certain others would be continued to be engaged by the contractor and it was also indicated that no dispute were pending as between the contractor and his workmen out of this settlement. This was also honoured by the respondent company in due course. Further the said union has signed a settlement under section 12(3) of the Industrial Disputes Act between the respondent company and its direct workmen on 3-11-1998.

Out of 71 persons referred in the reference notification, 11 persons has got full and final settlement from their employer, *i.e.* the contractor and they were later observed by the company by issuing separate appointment orders and they are working in the respondent's factory as on date. Apart from this, as per the records and information available with this respondent, 28 persons has got their full and final settlement from their employer namely E. Selvaraj by entering into separate settlements under section 18(1) of the Industrial Disputes Act, 1947. Out of the remaining persons, some other persons has got settlement from their employer *i.e.*, the contractor and the said documents are available only with the said contractor. The other persons are gainfully employed in other companies and most of the workmen were not interested in pursuing the disputes or to support the petitioner union. Further minority of the annexure mentioned persons were not the members of the petitioner union and in fact they have not raised any dispute or made any complaint or set out their grievance if any to the petitioner union and as such the reference itself is bad as the petitioner union has no *locus standi* to raise the dispute regarding the persons, who had no grievance or any dispute. Hence, they pray for dismissal of the petition.

6. On the side of the petitioner, PW1 was examined and marked Ex.P1 to Ex.P8. On the side of the respondent, RW1 was examined and Ex.R1 to Ex.R95 were marked.

7. *Now the point for determination is :*

"Whether the petitioner is entitled for the relief sought for?"

On this point:

8. The contention of the petitioner is that the said workmen were engaged in two shifts for production of trailer chassis and assembling from 1992 as workmen on regular basis under respondent management factory premises called Unit-II they were regularly engaged in the basically core production activities perennial in nature continuously without any break throughout the year and the respondent management failed and refused to extend the statutory benefits under the Factories Act, E.S.I. E.P.F., and the payment of Bonus Act, etc., and the petitioner union demanded and complained to the authorities concerned for those benefits to be extended to the workmen for whom the respondent management failed to respond and dragged on the issue indefinitely and the respondent management also intimidated the workmen and the office bearers of the union through one E. Selvaraj creating unrest and dissatisfaction among the workmen. The

petitioner has further contended that the petitioner was compelled to issue a notice of strike dated 23-5-1996 to the respondent management to fulfil their demands and the Conciliation Officer called for conciliation on it, but the respondent management refused to negotiate the demands even before the Labour Officer and tried to induct one Selvaraj all of a sudden surprisingly in the proceedings as if he was the labour contractor through whom the workmen were employee and the respondent management was only the principal employer by which imposed on the workmen to strike work from 6-6-1996, since there was no other alternative for the protection of their rights and after several rounds of talks before the Labour Officer, the respondent management agreed the demands of the petitioner union resulting in the withdrawal of the strike by the petitioner union and the workmen reported for duty, but the respondent management orally refused employment to all the workmen without any reason.

9. In order to prove his claim, the President of the petitioner union was examined as PW1. PW1 in his evidence has deposed about the said facts and through him, Ex.P1 to Ex.P8 were marked.

10. The contention of the respondent is that as part of its requirements, the respondent company engaged the contractor by name E. Selvaraj to provide contract labour for carrying out the contractual obligations entrusted to the said contractor and the workmen on whose behalf this dispute has been raised by the petitioner union were not employed by this respondent and the said persons were admittedly employed by the contractor E. Selvaraj and hence there is no employer and employee relationship between them and the said employees. The respondent further contended that it is learnt from the contractor E. Selvaraj that about 17 workmen, who were the employees of the said contractor, settled their accounts fully arising out of the voluntary resignation submitted by them to their employer E. Selvaraj and the individuals had entered into a settlement with their employer E. Selvaraj, contractor as contemplated under section 18(1) of Industrial Disputes Act for having settled that accounts fully with their employer/contractor. In order to prove his contention, the Senior Manager HR and Administration in the respondent company was examined as RW1 and through him, Ex.R1 to Ex.R95 were marked.

11. Heard both sides. On perusal of records, it is seen that the said contractor by name Selvaraj had made an application on 23-9-1992 to the then Licensing Officer for engaging workmen on contract basis in the respondent company. After scrutiny and on the spot verification, the then Labour Officer

(Enforcement) refused to grant the licence to the said Selvaraj under Ex.P5, after pointing out the following grounds:-

(1) The factory where your workmen on contract basis were being engaged was inspected twice in this regard, in both the occasions, the engagement of your firm was not in a position to engage 20 or more workers.

(2) It is clear that the workmen are directly engaged in the main manufacturing process of the factory, which is against the spirit of the law.

(3) The work carried out by contract labour in the factory premises is of perennial nature.

(4) There is enough justification for engaging regular labour as there will be sufficient work to all in the manufacturing process.

The records would further reveal that the said decision of the Licensing Officer was also communicated to the said Selvaraj on 17-8-1993 under Ex.R10. Thereafter the said Selvaraj filed another application on 24-6-1996 for licence under section 12 of the Act. On receipt of the said application, the matter was enquired into again and a spot inspection was made by the Labour Officer and then he sent a letter to the said Selvaraj under Ex.P6, refusing the licence, as there was no need for reconsidering the decision already taken by him. Aggrieved against the order of the Labour Officer (Enforcement), dated 8-7-1996, the said Selvaraj preferred an appeal before the Hon'ble High Court, Madras *vide* W.M.P. No. 1148 of 1997 and W.M.P. Nos.14463, 19036 and 19037 of 1996 and the same was also dismissed by the Hon'ble High Court, confirming the order of the Labour Officer (Enforcement) under Ex.P7.

12. From the above, it is clearly seen that on spot inspection, the Labour Officer (Enforcement) found that the work on which the contract labour was proposed to be engaged by the said Selvaraj involved manufacturing process carried out in the respondent company and is not of any incidental nature and also as the work was of perennial nature and is to be done primarily through the regular workmen, the Labour Officer on reasonable grounds rejected the request made by the said Selvaraj and the appeal preferred by him against the order of the Labour Officer was also dismissed by the Hon'ble High Court, Madras.

13. The learned counsel for the respondent has deposed that there is no relationship between the respondent company and the petitioner, since there was a legal and valid contract between the respondent management and the said contractor Selvaraj, dated 31-12-1992 under Ex.R1, which was

periodically renewed under Ex.R2 and Ex.R3 and the respondent management has no control or supervision over his men, who were engaged by the said contractor for fulfilling the job order entrusted to him and hence Ex.R1 to Ex.R3 will bear ample testimony to the fairness and genuineness of the contract agreement between the said contractor and the respondent. The learned counsel for the respondent relied upon the following decisions to support his contention :

2004 LLR 351:

"Relationship of Employer-Employee Determination of -Nature of extent of control required to establish such relationship Only because some persons had been more or less continuously working in particular premises-It may not be possible to infer that a relationship of employer and employee has come into being-Control test and organisation test are not the only factors which can be said to be decisive-Integration of relevant tests With a view to elicit the answer-The court is required to consider several factors which would have a bearing on the result: (a) who is appointing authority, (b) who is the pay master, (c) who can dismiss, (d) how long alternative service lasts (e) the extent of control and supervision, (f) the nature of the job *e.g.* whether it is professional or skilled work, (g) nature of establishment, (h) the right to reject."

1985 STPL (LE) 12002 SC :

"It is clear that Parliament has not abolished contract labour as such but has provided for its abolition by the Central Government in appropriate cases under section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. It is not for the court to enquire into the question and to decide whether the employment of contract labour in any process, operation or other work in any establishment should be abolished or not. This is a matter for the decision of the Government after considering the matters required to be considered under section 10 of the Act.

2006 STPL (LE) 37449 SC:

"Contradictory and inconsistent plea - Workman whether before the Labour Court or in writ proceedings were represented by the same Union- A definite stand taken by the employees that they had been working under the contractor-Taking a contradictory and inconsistent plea that they were also the workmen of the principal employer, which are mutually destructive plea, is impermissible in law-Common law principles of estoppel, waiver and acquiescence are applicable in an industrial adjudication."

2009 STPL (LE) 42216 SC:

“In the absence of a notification under section 10 of CLRA Act prohibiting the employment of contract labour in the operation of cargo handling work, the workman employed as contract labour not entitled to claim absorption.”.

AIR 2001 Supreme Court 3527:

Prohibition of contract labour-Automatic absorption of contract labour by principal employer - Not contemplated by Act-Contract labour however to be given preference in employment by principal employer.”.

AIR 1995 S.C. 1893:

“Contract labour - Abolition of - Authority is exclusively vested in appropriate Government - No court or industrial adjudicator can abolish contract labour - However contract must be genuine.”.

2002 STPL (LE) 31048 SC:

“Absorption of contract labour cannot be automatic and it is not for the court to give such direction - Union of workmen can seek remedies available in terms of para 125 of judgment in sail case before state government of industrial adjudicator.”

1997 LLR 163:

“Petitioner applied for being enlisted as contract under section 12-Rejected-Ground that licence cannot be granted as the petitioner company is of regular and permanent nature-whether Deputy Labour Commissioner had jurisdiction to reject this petition? - No.”

2001-II-LLJ. (A.P.)

“No Notification under section 10(1) issued - Nor cogent evidence to show board was in pith and substance employer - Continuation in service for years does not change status of person.”.

14. The learned counsel for the respondent further contended that Ex.R6, allotment letter for issuance of -separate PF sub code number to labour contractor E. Selvaraj will show that immediately after the contract agreement, the contractor has obtained independent PF sub-code allotted by the Regional Commissioner of Employee's Provident Fund and Ex.R30 series and Ex.R31 series will prove that the contractor had independently paid PF and E.S.I. contributions of his employees with the appropriate authorities. He further contended that the genuineness of the contract can very well be inferred further from Ex.R28, the random voucher transactions and Ex.R29, the invoices and job order forms the contractor and Ex.R72, PF settlement documents will also prove that the said contractor has complied with

the statutory requirements and the wages and all statutory payments all along were paid only by the contractor to his employees employed by him.

15. As per Ex.P5 and Ex.P6, the licence applied by the contractor E. Selvaraj has been rejected by the Labour Officer on 17-8-1993 and 8-7-1996 and the appeal preferred by him before the Hon'ble High Court, Madras has also been dismissed on 27-3-1997 as per Ex.P7. In the above circumstances, Ex.R1 to Ex.R3 cannot be taken into consideration. Further it is the case of the contractor Selvaraj that he has paid the E.S.I. amount under Ex.R30 and Ex.R31 series. But no oral evidence has been produced on the side of the respondent to prove that the said amount has been paid by them for the petition mentioned workmen. Ex.R28 series are the bank vouchers issued by the respondent company in favour of Selvaraj and Ex.R29 series are the invoices said to have been sent by the said Selvaraj to the respondent company claiming labour charges for fabrication work. But the respondent has not produced any document to show that in respect of the petition mentioned workmen, Ex.R28 and Ex.R29 have been issued. Further the said Selvaraj is a competent person to speak about relationship between him and the petition mentioned workmen, as stated by the respondent.

16. Further on perusal of records, it is seen that the application in I.A. No.16/2009 was filed by the respondent to implead the said E. Selvaraj, Labour Contractor and the said petition was dismissed on 3-3-2010 by this Tribunal and the said order was also confirmed by the Hon'ble High Court, Madras on 23-3-2010 in W.P. No. 5736/2010. The above order was also further confirmed by the Bench in Writ Petition No. 674/2010, dated 23-9-2010, observing that the management will be at liberty to lead evidence before the Labour Court. Further the management filed an application in I.A. No.138/2010, ordering to issue summons to the said E. Selvaraj, Labour Contractor to produce the connected documents and the petition was allowed on 9-12-2010 by this court. The said Selvaraj was summoned by the respondent. Eventhough the summons was served to appear on 21-3-2011, the said Selvaraj was absent on 21-3-2011 and 20-4-2011. Hence, the respondent/management proceeded with their case and the proof affidavit of RW1 was filed on 20-4-2011. The non-examination of the said Selvaraj is fatal to the case of the respondent. Apart from the above, on the side of the respondent, no wage register has been produced pertaining to the relevant period to prove that the petition mentioned workmen were not his employees. Hence, the respondent has failed to prove that the petition mentioned workmen were not their employees and they were working under the contractor by name E. Selvaraj.

17. At this juncture, it is pertinent to refer the following decisions, which are relevant to this case:-

1990(1) LLJ Page 445:

Dhilip Hanumantrao Shirke and Others Vs. Zilla Parishad, Yavatmal and Others:-

“Section 2(OO) sub-clause (bb) and section 25-F - Sub-clause (bb) of Section 2(OO) has to be construed strictly - Letter of appointment providing fixed tenure cannot be the sole basis to determine whether sub-clause (bb) of section 2(OO) is attracted-Nature of employment, nature of duties and type of job should be considered - Amended sub-clause (bb) would apply only to cases where work ceases with employment or post itself ceases to exist or such other analogous cases where contract of employment is fair, proper and *bona fide* - Labour Court has jurisdiction to examine each and every case and protect the workmen against exploiting employers.”

AIR 1985 Supreme Court 670:

The Workmen of Food Corporation of India Vs. Food Corporation of India:

“Contract Labour (Regulation and Abolition) Act (37 of 1970), Pre. - Object of Act - What is - Anti-labour practice must be thwarted:

“The Act was enacted with a view to abolishing wherever possible or practicable, the employment of contract labour. The Act aimed at abolition of contract labour in respect of such categories as may be notified. Where the law helps, such anti-labour practices must be thwarted or nipped into bud”.

2001(II) LLJ 1087 (2001 - (oo7) - S.c.C. - 0001):

Steel Authority of India Limited and Others Vs. National Union Waterfront Workers and Others:-

"An analysis of the cases, discussed above, shows that they fall in three classes: (1) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract Labour or because the appropriate Government issued notification under section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered: (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present

instances wherein the court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer.”.

18. As per the decision rendered by the Hon'ble Apex Court in the said Steel Authority of India case, it is the duty of the Labour Court to analyse whether the alleged contract is sham and nominal or real one. The reality of the nature of contract has to be scrutinised thoroughly by the Labour Court. When the licence for engaging contract labour was denied by the Labour Officer through Ex.P5 and Ex.P6 and the same was confirmed by the Hon'ble High Court, Madras in Ex.P7, it is the duty of the respondent management to prove their case in rightful manner. When the respondent denies that the petition mentioned workmen were not employed under their management, it is the burden of the respondent to prove that they were not employed under their supervision. It is the duty of the respondent to prove that the petition mentioned workmen were working under the said Selvaraj. To prove the above version, as already stated, the said Selvaraj has not been examined as a witness before this court. Eventhough some of the documents refer about the said contractor E. Selvaraj, there is no conclusive proof to ascertain that the respondent engaged him, as their contractor to engage the petition mentioned workmen to perform certain other duties. It is the duty of the management to prove that the alleged agreements between the said Selvaraj and the respondents under Ex.R1 to Ex.R3 are legally valid or not. Further the said documents under Ex.R1 to Ex.R3 are not registered one. Eventhough through Ex.R6, separate code has been issued, the licence was refused by the concerned Labour Officer to engage the alleged contractor Selvaraj through Ex.P5 and Ex.P6. At this stage, on what basis, the management has entered the unregistered agreements between the alleged contractor Selvaraj and the respondent management through Ex.R1 to Ex.R3 has to be explained by the management properly. But there is no proper explanation from them in this regard. Ex.R30 is the E.S.I. pay slip, Ex.R31 is the E.P.F. challans and Ex.R72 is the application forms submitted to E.P.F. organisation and these documents may be self serving documents of the management, since as already stated there was no licence issued to the respondent management to engage the said Selvaraj as contract labour by the concerned authority. Ex.R71 is the settlement under

section 18(1) of the Industrial Disputes Act, through which some settlement has been arrived between the parties. But the said settlement under Ex.R71 has been denied by the petitioner. Hence, the said Selvaraj is the competent person to speak about the said settlement under Ex.R71. As already stated the said Selvaraj has not been examined as a witness before this court. Under these circumstances, in the absence of any legal contract to show that the said Selvaraj was appointed as contractor to engage the petition mentioned workmen under the contractual basis, this court cannot come to the conclusion that the said Selvaraj is the contractor of the respondent and the petition mentioned workmen were employed as contract workmen under the relevant period.

19. The contention of the petitioner is that the petition mentioned workmen were terminated from service without any reason or enquiry and hence the action of the respondent is illegal, arbitrary and unsustainable in law.

20. There is no record produced on the side of the respondent to prove that the enquiry was conducted before terminating the petition mentioned workmen from service. Further no termination order was issued to them. In the above circumstances, the termination of the petition mentioned workmen by the respondent is illegal. The learned counsel for the respondent has submitted that some of the employees were given employment as per the decision taken by the management. But there is no clear picture shown by the learned counsel for the petitioner about this aspect. Hence, the employees, who were not re-employed by the respondent management, are entitled to get employment under the respondent as per the Industrial Disputes Act. Hence for the reasons stated above, this court has come to the conclusion that the petition mentioned workmen were the employees under the respondent and their termination from the service is against the law. Accordingly, this point is answered.

21. In the result, this industrial disputes is allowed and the petition mentioned employees are entitled for reinstatement with continuity of service and other attendant benefits. The petition mentioned employees are also entitled for 25% of back wages. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 28th day of February, 2012.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Puducherry.

List of witnesses examined for the petitioner:

P.W.1—23-11-2010—Balasubramanian

List of witnesses examined for the respondent:

RW1—20-4-2011—Jayaseelan

List of exhibits marked for the petitioner:

- Ex.P1 — Copy of the dispute raised by the petitioner union, dated 18-9-1996.
- Ex.P2 — Copy of the bonus demand letter by the petitioner union, dated 11-10-1997.
- Ex.P3 — Complaint addressed to Chief Inspector of Factories.
- Ex.P4 — Copy of the notification by the Labour Department, dated 19-4-1999.
- Ex.P5 — Copy of the letter for refusal of licence by the authority to Selvaraj, dated, 17-8-1993.
- Ex.P6 — Copy of the letter for refusal of licence by the authority to Selvaraj, dated 8-7-1996.
- Ex.P7 — Copy of the order of Hon'ble High Court, dated 27-3-1997.
- Ex.P8 — Total list of workmen engaged in Unit II with all details.

List of exhibits marked for the respondent:

- Ex.R1 — Agreement between Selvaraj and respondent company dated 31-12-1992
- Ex.R2 — Agreement between Selvaraj and respondent company, dated 9-12-1995.
- Ex.R3 — Amendment to agreement, dated 9-12-1995.
- Ex.R4 — Letter by respondent to Labour Officer, dated 6-2-1993.
- Ex.R5 — Settlement under section 12(3) of Industrial Disputes Act, dated 5-3-1992.
- Ex.R6 — Allotment letter for issuance of separate PF code number, dated 29-3-1993.
- Ex.R7 — Letter sent by Registering Officer, dated 9-9-1992.
- Ex.R8 — Application for licence by Selvaraj dated 22-9-1992.
- Ex.R9 — Letter by respondent to Labour Officer, dated 6-11-1992.
- Ex.R10 — Order by Labour Officer to Selvaraj, dated 17-8-1993.

Ex.R11 — Affidavit of Selvaraj in W.P. No.10880/1996.	Ex.R35 — Order by Hon'ble High Court in W.P. No. 10608/1999 dated 1-9-2003.
Ex.R12 — Affidavit of petitioner union, dated 28-8-1996.	Ex.R36 — Order in IA16/1999 dated 3-3-2010.
Ex.R13 — Order by Hon'ble High Court in W.P. No.10880/96, dated 6-9-1996.	Ex.R37 — Order by Hon'ble High Court in W.P. No. 13562/1999, dated 9-2-2009.
Ex.R14 — Counter affidavit filed by Labour Officer, dated 20-9-1996.	Ex.R38 — Typed set documents along with index in W.A. No. 674/2010.
Ex.R15 — Counter affidavit filed by respondent, dated 12-12-1996.	Ex.R39 — Order by Hon'ble High Court in W.A. No. 674/2010, dated 23-9-2010.
Ex.R16 — Order of Hon'ble High Court in W.P. No.10880/96, dated 27-3-1997.	Ex.R40 — Petition by petitioner union, dated 22-5-1996.
Ex.R17 — Grounds of appeal by Selvaraj in W.A.338/97 dated 10-4-1997.	Ex.R41 — Form L strike notice by petitioner union dated 23-5-1996.
Ex.R18 — Affidavit filed by Selvaraj in W.A.338/97, dated 10-4-1997.	Ex.R42 — Notice of enquiry, dated 23-5-1996.
Ex.R19 — Affidavit by petitioner union, dated 28-6-1997.	Ex.R43 — Letter-by Selvaraj, dated 27-5-1996.
Ex.R20 — Order of Hon'ble High Court in C.M.P. 5567/97, dated 9-4-1997.	Ex.R44 — Letter by respondent to Labour Officer, dated 3-6-1996.
Ex.R21 — Order by Hon'ble High Court in W.A. 338/97 dated 6.9.2001.	Ex.R45 — Letter by respondent to Labour Officer, dated 25-6-1996.
Ex.R22 — Affidavit by Mettupalayam Industries Pattali Workers Union in W.P. No.10880/96, dated 20-11-1996	Ex.R46 — Letter by Selvaraj to Labour Officer, dated 25-6-1996.
Ex.R23 — Order passed by Licensing Authority, dated 14-12-2001.	Ex.R47 — Letter by respondent to Labour Officer, dated 8-7-1996.
Ex.R24 — Letter by respondent to Registering Officer, dated 30-12-1995.	Ex.R48 — Letter by Selvaraj, dated 11-7-1996.
Ex.R25 — Letter by respondent to Registering Officer, dated 24-6-1996.	Ex.R49 — Counter of petitioner union to Labour Officer, dated 19-7-1996.
Ex.R26 — Letter by Registering Officer, dated 2-9-1997.	Ex.R50 — Letter by respondent to Labour Officer, dated 19-7-1996.
Ex.R27 — Letter by respondent to Registering Officer, dated 20-9-1997.	Ex.R51 — Letter by respondent to Labour Officer, dated 22-7-1996.
Ex.R28 — Bank vouchers 6 in Nos.	Ex.R52 — Letter by respondent to Labour Officer, dated 25-7-1996.
Ex.R29 — Invoice of Selvaraj 12 in Nos.	Ex.R53 — Letter by respondent to Labour Officer, dated 26-7-1996.
Ex.R30 — E.S.I.C. Pay in slip 10 in Nos.	Ex.R54 — Letter by respondent to Labour Officer, dated 7-8-1996.
Ex.R31 — E.P.F. challans 44 in Nos.	Ex.R55 — Letter by respondent to Labour Commissioner, dated 9-8-1996
Ex.R32 — Affidavit by respondent in W.P. No. 13562 of 1999.	Ex.R56 — Letter by respondent to Labour Officer, dated 12-8-1996.
Ex.R33 — Affidavit by Selvaraj, dated 17-6-1999.	Ex.R57 — Letter by petitioner union to respondent, dated 15-4-1997.
Ex.R34 — Order by Hon'ble High Court in W.M.P. No.19519/99, dated 10-8-1999.	Ex.R58 — Letter by Selvaraj to Labour Officer, dated 16-4-1997.

Ex.R59 — Letter by respondent to Labour Officer, dated 12-5-1997.

Ex.R60 — Letter by Selvaraj to Labour Officer, dated 12-5-1997.

Ex.R61 — Letter by respondent to Deputy Labour Commissioner, dated 14-5-1997.

Ex.R62 — Letter by respondent to Labour Officer, dated 23-9-1997.

Ex.R63 — Letter by respondent to Commissioner of Labour, dated 23-9-1997.

Ex.R64 — Letter by respondent to Secretary, dated 24-9-1997.

Ex.R65 — Letter by respondent to Labour Officer, dated 23-9-1997.

Ex.R66 — Letter by respondent to Deputy Labour Commissioner, dated 28-5-1998.

Ex. R67— Letter by respondent to Deputy Labour Commissioner, dated 10-6-1998.

Ex.R68 — Failure report by Deputy Labour Commissioner, dated 15-3-1999.

Ex.R69 — Reference Notification, dated 19-4-1999.

Ex.R70 — FIR No.42/96 of Mettupalayam P.S., dated 11-6-1996.

Ex.R71 — Settlement under section 18(1) of Industrial Disputes Act.

Ex.R72 — Application forms submitted to E.P.F. Organisation.

Ex.R73 — Appointment letter to R. Subramanian, dated 1-9-1997.

Ex..R74 — Appointment letter to A. Singaravelu, dated 4-11-1998.

Ex.R75 — Appointment letter to K.T. Anilkumar, dated 15-3-2002.

Ex.R76 — Appointment letter to A. Arokiasamy.

Ex.R77 — Photocopy of the proceedings of the Labour Officer.

Ex.R78 — Copy of the letter by Selvaraj, dated 27-5-1996.

Ex.R79 — Copy of the letter, dated 5-6-1996 sent by respondent.

Ex.R80 — Copy of the letter, dated 3-6-1996 sent by respondent.

Ex.R81 — Copy of the letter, dated 11-6-1996 sent by the respondent.

Ex.R82 — Copy of the letter, dated 25-6-1996 sent by the respondent.

Ex.R83 — Copy of the letter by Selvaraj, dated 25-6-1996.

Ex.R84 — Copy of the notice of enquiry, dated 26-6-1996.

Ex.R85 — Copy of letter, dated 8-7-1996 by the respondent.

Ex.R86 — Copy of letter, dated 11-7-1996 by Selvaraj.

Ex.R87 — Copy of letter, dated 19-7-1996 by the respondent.

Ex.R88 — Copy of letter, dated 26-7-1996 by the respondent.

Ex.R89 — Copy of notice of enquiry, dated 18-8-1997.

Ex.R90 — Copy of letter by Selvaraj, dated 18-8-1997.

Ex.R91 — Copy of letter by Selvaraj, dated 21-8-1997.

Ex.R92 — Copy of the proceedings of the Labour Officer.

Ex.R93 — Copy of the letter by respondent, dated 28-5-1998.

Ex.R94 — Copy of the letter by the respondent, dated 10-6-1998.

Ex.R95 — Copy of notice of enquiry, dated 2-7-1998.

T. MOHANDASS,
 II Additional District Judge,
 Presiding Officer,
 Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY
OFFICE OF THE CHIEF EDUCATIONAL OFFICER

No. 650/CEO/Exam Cell/2012-13.

Puducherry, the 13th February 2013.

NOTIFICATION

It is hereby notified that the original S.S.L.C. / Matric Mark Certificate, bearing Register Number 473458 of March 2004, in respect of D. Rajesh, an ex-pupil of Fatima Higher Secondary School, Karuvadikuppam is reported to have been lost and beyond the scope of recovery and it is proposed to issue a duplicate